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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,072	04/13/2004	Robert Sigurd Nelson	83622	3979

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OFFICE OF PATENT COUNSEL
SPAWARSYCEN, CODE 20012
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EXAMINER

LOBO, IAN J

ART UNIT	PAPER NUMBER
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3662

DATE MAILED: 02/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,072

Applicant(s)

NELSON, ROBERT SIGURD

Examiner

Ian J. Lobo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 4 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,10,12 and 13 is/are rejected.
- 7) ☒ Claim(s) 8,9 and 11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/13/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species:

A fastener means comprising a tether (claim 2).

A fastener means comprising an optical link (claim 3).

A fastener means comprising an acoustic link (claim 4).

The species are independent or distinct.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 5-14 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. See MPEP § 809.02(a).

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2. During a telephone conversation with Mr. Lee on February 14, 2006 a provisional election was made without traverse to prosecute the invention of species 1, claim 2.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 3 and 4 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by any of the patents to Arnold ('135).

Per claim 13, the patent to Arnold discloses a locator device that includes a module (3) constructed of inherently buoyant materials, a tether (9) connecting the module (3) to a structure (73), where the tether pays out and allows the module (3) to ascend to the water surface when the structure (73) becomes submerged in a body of water, a communication device (5) contained in a chamber within the module (3), where the communication device (5) transmits a communication signal when the module breaks the water surface when the structure becomes submerged in a body of water.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 5, 6, 7, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold ('135) in view of Woodall et al ('152).

Per claim 1, the patent to Arnold discloses a locator device that includes a module (3) constructed of inherently buoyant materials, a fastener means (9) connecting the module (3) to a structure (73), a communication signal source (5) contained in a chamber within the module (3), where the communication device (5) which transmits a communication signal when the module breaks the water surface when the structure becomes submerged in a body of water and a power source (59).

The difference between claim 1 and Arnold is the claim specifies that the locator device further includes at least one computer contained in the container and connected to the power source and communication device.

Woodall et al discloses a marker buoy that includes a housing having a processing section or computer (20, 24) connected to a power source (20) and communication section (60). The computer has appropriate software and operating instructions to selectively activate the communication sections.

In view of Woodall et al, it would be obvious to one of ordinary skill in the art to modify Arnold to include a computer in the module (3) to provide the module with

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selective activation of the communication section so as to lower the power requirements of the device.

Dependent claims 2, 5-7, 10 and 12 are further provided by the combination of the above prior art.

Allowable Subject Matter

7. Claims 8, 9 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 14 is allowed.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


10. It is noted that the attached PTO form 1449 includes an incorrect patent no and/or name. It's entry has been lined out and therefore not considered.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ian J. Lobo whose telephone number is (571) 272-6974. The examiner can normally be reached on Monday - Friday, 6:30 - 3:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas H. Tarcza can be reached on (571) 272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ian J. Lobo
Primary Examiner
Art Unit 3662

ijl